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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,521	04/19/2006	Hans Lambert	GTH0002US	3620
23413 7590 11/19/2009 CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103				
EXAMINER				
STUART, COLIN W				
ART UNIT		PAPER NUMBER		
3771				
NOTIFICATION DATE		DELIVERY MODE		
11/19/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

# Office Action Summary

**Application No.**

10/576,521

**Applicant(s)**

LAMBERT, HANS

**Examiner**

COLIN STUART

**Art Unit**

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/19/06 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

### DETAILED ACTION

1. This office action is in response to the amendment filed 7/14/09. As directed by the amendment, claim 3 has been amended and no claims have been added or cancelled. As such, claims 1-9 are pending in the instant application.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marler et al. (7,347,203) in view of Ahlmen et al. (7,077,136).**

In regards to claim 1, Marler shows a device for which includes a housing 35 having a first opening and a second opening for formation of a flow path to and from the patient in the housing for a breathing medium (see Fig. 3), and a valve means (23 see Fig. 3) that is adjustable between an active position, in which a flow path to and from the patient passes through an absorption body (15), and a passive position, in which a flow path to and from the patient passes through the housing without passing through the absorption body, wherein the absorption body remains unchanged location in the housing in both valve positions (see Fig. 3 and 8). Marler is silent as to the absorption body arranged in the housing and having a capacity of absorbing and desorbing anesthetics (Marler teaches a filter 48 and a HME element 15). However, Ahlmen teaches a device which is for absorbing and desorbing anesthetics which includes an absorption body (10 Fig. 1). It would have been obvious to one of ordinary skill in the

art at the time the invention was made to modify the Marler device to apply the absorption body as taught by Ahlmen in place of the filter or HME element of the Marler device in order to "allows the re-use of exhaled anesthetic" (Ahlmen col. 1 ln. 35-36).

In regards to claim 2, the modified Marler device includes a valve means (Marler 23) which is a rotatable unit (see Marler Fig. 3 and 8).

In regards to claim 3, the modified Marler device includes openings arranged at the rotatable unit such that the opening is in a first rotational position on a side of the absorption body and in a second rotational position on an opposite of the absorption body (see Fig. 3 openings 30A).

In regards to claim 4, the modified Marler device includes a plate-shaped absorption body and the body is in the active position substantially perpendicular to the height of the housing, which is in the form of a box having a height smaller than a smallest extension thereof transverse to the height and each opening has a flow direction that is substantially parallel to the absorption body (see Fig. 3).

In regards to claim 5, the modified Marler device includes that the two flow paths are concentrically arranged in relation to each other (see Fig. 3).

In regards to claim 6, the modified Marler device includes a absorption body which is arranged in the flow path through the housing.

**4. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marler et al. (7,347,203) and Ahlmen et al. (7,077,136) as applied to claim 6 above, and further in view of Heron (2003/0089116) and Hayek (4,930,498).**

In regards to claim 7, the modified Marler's device teaches all the limitations as discussed above, but is silent as to the valve means including a first and second rotatable units in which the first includes an even number of sections distributed in a circumferential direction, each section including a wall member and an opening, where in every second section the opening is situated radially outside the wall member and in every second section the opening is situated radially inside the wall member, and which second unit includes an even number of portions distributed in the circumferential direction, where every second portion includes a fully covering wall and every second portion includes an opening. However, Heron and Hayek teach a rotary valve with the claimed limitations discussed above. The element on the left of Fig. 2 of Heron is the claimed first unit and circular disc valve 824 of Hayek (Fig. 10A) is the second unit as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the modified Marler's device by replacing the valve means with a rotatable first unit in view of Heron and a second unit in view of Hayek, because Heron states "wear of rotor ... is reduced" (Heron para 0008) and Hayek states that "such a valve may be used, for example, to provide alternately low and high pressures to a ventilator" (col. 6 ln. 1 of Hayek).

In regards to claim 9, the modified Marler's device includes each of the units in substantially conical form (see Fig. 10B).

**5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marler et al. (7,347,203), Ahlmen et al. (7,077,136), Heron (2003/0089116), and**

**Hayek (4,930,498) as applied to claim 7 above, and further in view of Walton et al. (4,532,961).**

In regards to claim 8, the modified Marler's device teaches all the limitations as discussed above, but is silent as to the number of sections is eight or greater and the number of portions is equal to the number of sections, and each section and each portion are of substantially triangular shape and each opening and each wall member are of substantially triangular or trapezoidal shape. However, Walton teaches a similar rotatable valve with 8 sections as claimed (See Walton Fig. 3 with 8 ports (37)). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the modified Marler's device valve to have 8 sections in view of Walton et al., because Walton et al. states that the valve is "economical to manufacture and capable of use with a wide variety of fluids or gases in high pressure flowpaths" (col. 1 ln. 60 Walton).

### ***Response to Arguments***

6. Applicant's arguments with respect to claim 1-9 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art:

Linkner, Jr. (6,145,540), Pfeifer (5,950,518, and Spivey et al. (5,979,504) all relate to rotary valves for controlling flow through concentric flow paths.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771